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March 10, 2022

**VIA ECF & E-MAIL**

United States District Court  
Southern District of New York  
Attn: John P. Cronan, U.S.D.J.  
500 Pearl Street, Courtroom 12D  
New York, NY 10007-1312  
cronannysdchambers@nysd.uscourts.gov

Re: Gioules v. Antigua Pharmacy LLC, *et ano.*  
Case No.: 1:21-cv-6400 (JPC) (SDA)  
Plaintiff's Response to the Court's March 7, 2022 Order Regarding Default Judgment

Dear Judge Cronan:

This office represents the Plaintiff in the above-referenced case. Plaintiff writes in accordance with this Court's Order dated March 7, 2022 to advise the Court as to whether he still intends to pursue his motion for default judgment, seeking approximately \$65,000.00 in damages. See Docket Entry 52. It is worthy to note that, prior to this Order, this Court previously set a briefing schedule with a March 18, 2022 deadline to file any reply in further support of his motion. See Docket Entry 24.

Plaintiff has reviewed Defendants' opposition papers and respectfully submits that there is an insufficient basis to deny its motion. Plaintiff intends to timely file reply papers in further support of the motion and pursue a default judgment because, among other things, Defendants **willfully** failed to appear by counsel as required and the individual defendant failed to file an answer as Ordered. In addition, as this Court aptly notes, Defendants failed to appear for a conference. These facts, in addition to other arguments Plaintiff will raise on reply, should weigh in favor of this Court exercising its discretion to grant a default judgment.

Notwithstanding the foregoing, Plaintiff remains ready to engage in settlement discussions with the Defendants, and notes that a Mediation Referral Order remains outstanding. See Docket Entries 15 and 20 ("With respect to mediation, Plaintiff contacted the Mediation Office on October 19, 2021 to begin the mediator selection process. ... Plaintiff sought and obtained ... an Order from the Court [requiring Defendants to appear by counsel for the mediation] (see Docket Entries 17-18), notified the Mediation Office of same, and was advised that the corporate Defendant was in the process of seeking counsel through a clinic at the court. On November 22, 2021, Plaintiff followed up with the Mediation Office but has not heard back since then").

Now that Defendants have retained counsel, Plaintiff is prepared to file a reply memorandum of law in further support of his motion for a default judgment and then conduct a mediation while the motion is held in abeyance. However, Plaintiff is only open to entertaining mediation upon Defendant's counsel conferring with his clients and providing a reasonable counter-offer to Plaintiff's demand prior to a mediation. Otherwise, the undersigned respectfully believes that a referral to mediation at this stage would remain unfruitful. If the parties fail to reach a settlement at the mediation, Plaintiff will request that the Court decide the motion. Plaintiff respectfully submits that the foregoing approach is in accord with Rule 1 of the Federal Rules of Civil Procedure, which requires that the rules be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding. See Fed. R. Civ. P. 1.

Lastly, the undersigned is respectfully requesting a brief adjournment of the scheduled Telephonic Conference Ordering Defendants to appear and show cause before this court on March 30, 2022. The undersigned will be traveling out of the country and is planned to only return on April 6, 2022.

Plaintiff thanks this honorable Court for its time and attention to this case.

Dated: Forest Hills, New York  
March 10, 2022

Respectfully submitted,

**SHALOM LAW, PLLC**

/s/ Jonathan Shalom

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